

FILED

14 MAY 30 PM 3:24

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

dlv

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MARIO GARCIA,  
Reg. No. A098595419,

Plaintiff,

vs.

SIX UNKNOWN NAMES AGENTS;  
BARACK OBAMA,

Defendants.

Civil No. 14-CV-0909 BEN (BGS)

**ORDER DISMISSING CIVIL  
ACTION WITHOUT PREJUDICE  
FOR FAILING TO PAY  
FILING FEES REQUIRED  
BY 28 U.S.C. § 1914(a) AND/OR  
FAILING TO MOVE TO  
PROCEED *IN FORMA PAUPERIS*  
PURSUANT TO  
28 U.S.C. § 1915(a)**

Plaintiff, currently detained at the Etowah County Jail in Gadsden, Alabama, and proceeding pro se, filed an incomprehensible one-page complaint entitled "Civil Rights Action with the Writ of Summons and Complaint" "under 42 U.S.C. § 1983" on April 15, 2014. (ECF Doc. No. 1).

**I. FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS**

All parties instituting any civil action, suit or proceeding in any district court of the United States, except an application for writ of habeas corpus, must pay a filing fee

///

///

1 of \$400. *See* 28 U.S.C. § 1914(a).<sup>1</sup> An action may proceed despite a party's failure to  
 2 pay this filing fee only if the party is granted leave to proceed *in forma pauperis* ("IFP")  
 3 pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th  
 4 Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

5 Plaintiff has not prepaid the \$400 in filing and administrative fees required to  
 6 commence a civil action, nor has he submitted a Motion to Proceed IFP pursuant to 28  
 7 U.S.C. § 1915(a). Therefore, the case cannot yet proceed. *See* 28 U.S.C. § 1914(a);  
 8 *Andrews*, 493 F.3d at 1051.

## 9 **II. CONCLUSION AND ORDER**

10 For the reasons set forth above, the Court hereby:

11 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the  
 12 \$400 civil filing and administrative fee or submit a Motion to Proceed IFP pursuant to  
 13 28 U.S.C. § 1914(a) and § 1915(a); and

14 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is  
 15 filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; **or**  
 16 (b) complete and file a Motion to Proceed IFP which includes a certified copy of his trust  
 17 account statement for the 6-month period preceding the filing of his Complaint. *See* 28  
 18 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).<sup>2</sup>

20 <sup>1</sup> In addition to the \$350 statutory fee, all parties filing civil actions on or after  
 21 May 1, 2013, must pay an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a),  
 22 (b); Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, eff. May  
 1, 2013. However, the additional \$50 administrative fee is waived if the plaintiff is  
 granted leave to proceed IFP. *Id.*

23 <sup>2</sup> Plaintiff is cautioned that if he chooses to proceed further with this action either  
 24 by paying the full \$400 in civil and administrative fees required by 28 U.S.C. § 1914(a),  
 25 or moving to proceed IFP, his Complaint, which is currently comprised of a single page  
 26 of unpunctuated and nonsensical legal jargon seeking the issuance of a "writ of  
 27 attachment garnishment" for "five million ... plus one hundred million dollars" against  
 28 unidentified "agents" and the President of the United States, will be screened and  
 immediately dismissed as frivolous pursuant to 28 U.S.C. § 1915A(b) and 28 U.S.C.  
 § 1915(e)(2)(b). *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)  
 (noting that 28 U.S.C. § 1915(e) "not only permits but requires" the court to sua sponte  
 dismiss an *in forma pauperis* complaint that fails to state a claim); *see also Rhodes v.*  
*Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing sua sponte screening required  
 by 28 U.S.C. § 1915A(b) of all prisoner complaints).

1       **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff  
2 with this Court's approved form "Motion and Declaration in Support of Motion to  
3 Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400 civil filing fee  
4 or complete and submit the enclosed Motion to Proceed IFP within that time, this action  
5 shall remain dismissed without prejudice and without further Order of the Court.

6  
7 DATED: 5/30/14

  
8 HON. ROGER T. BENÍTEZ  
9 United States District Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28